

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

TERESA MADELL ACKER,

Plaintiff,

v.

PROSPECT AIRPORT SERVICES, INC.,

Defendant.

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Case No. 1:21-cv-8

NOTICE OF REMOVAL

Defendant Prospect Airport Services, Inc. (“Prospect”) removes this action from the 261st Judicial District Court of Travis County, Texas, to the United States District Court for the Western District of Texas, Austin Division, under 28 U.S.C. sections 1332, 1441, and 1446, and in support, state as follows:

PROCEDURAL AND FACTUAL BACKGROUND

1. On December 2, 2020, Plaintiff Teresa Madell Acker (“Plaintiff” or “Acker”) filed a lawsuit in the 261st Judicial District Court of Travis County, Texas, styled *Teresa Madell Acker v. Prospect Airport Services, Inc.*, Cause No. D-1-GN-20-007291, against Prospect for injuries she alleges she sustained while falling at the Austin Bergstrom Airport. A copy of all documents filed in the state court action are attached as Exhibits 1-6.

2. Plaintiff seeks monetary relief exceeding more than \$1,000,000. *See* Plf.’s Orig. Pet., ¶ 3.01.

3. Prospect was served with summons on December 7, 2020.

4. On December 21, 2020, Prospect filed its Original Answer.

BASIS FOR REMOVAL: DIVERSITY JURISDICTION

5. A civil action initially filed in state court “of which the district courts of the United States have original jurisdiction” may be removed to the local federal district court. 28 U.S.C. § 1441(a). Removal is appropriate where the matter in controversy exceeds \$75,000, exclusive of interest and costs, and is between citizens of different states. 28 U.S.C. § 1332(a)(1).

6. Removal is proper here under 28 U.S.C. section 1332(a) because the matter in controversy exceeds \$75,000, and the parties are citizens of different states.

A. The parties are diverse and Defendant is not a citizen of Texas.

7. A party is a citizen of the state in which the party is domiciled. *Preston v. Tenet Healthsystem Mem'l Med. Ctr., Inc.*, 485 F.3d 793, 797 (5th Cir. 2007). “A person’s domicile is the place of his true, fixed, and permanent home and principal establishment, and to which he has the intention of returning whenever he is absent therefrom.” *Mas v. Perry*, 489 F.2d 1396, 1399 (5th Cir. 1974). At the time Plaintiff filed this lawsuit, she owned a home in Williamson County, Texas, for which she claimed a homestead exemption. *See* Exhibit A to Declaration of Elliot Strader, attached as Exhibit 9.¹ The homestead exemption is only available when the home is the taxpayer’s “principal residence.” TEX. TAX CODE § 11.13(j)(1)(D). Plaintiff is therefore domiciled in Williamson County, Texas and is a citizen of the State of Texas for diversity purposes.

8. A corporation is deemed to be a citizen of every State and foreign state in which it is incorporated or has its principal place of business. 28 U.S.C. § 1332(c)(1). Prospect is incorporated in the State of Illinois and has its principal place of business in Illinois. *See* Exhibit

¹ Prospect respectfully request this Court take judicial notice of Exhibit A to the Declaration of Elliot Strader pursuant to Federal Rule of Evidence 201, as it represents matters of public record not subject to reasonable dispute because it can be accurately and readily determined from a source, the Williamson County Appraisal District, whose accuracy cannot reasonably be questioned.

9 – Declaration of Elliot Strader, ¶ 2. Prospect is therefore a citizen of the State of Illinois for the purposes of diversity jurisdiction.

B. The amount in controversy exceeds \$75,000.

9. Under 28 U.S.C. section 1332(a), the matter in controversy must exceed \$75,000. Plaintiff's Original Petition provides, "Plaintiff affirmatively states that she seeks monetary relief in accordance with Tex. R. Civ. P. 47(c)(5)." Rule 47(c)(5) states, in pertinent part, "[a]n original pleading which sets forth a claim for relief, whether an original petition, counterclaim, cross-claim, or third party claim, shall contain ... a statement that the party seeks ... monetary relief over \$1,000,000 ..." Accordingly, Plaintiff seeks more than \$1,000,000 in damages. *See* Plf.'s Orig. Pet., ¶ 3.01. Because the value of the damages sought by Plaintiff exceeds \$75,000, Prospect has satisfied the amount in controversy requirement.

PROCEDURAL REQUIREMENTS

10. Prospect has satisfied the procedural requirements for removal under 28 U.S.C. § 1446. This Notice of Removal is timely because it is filed within 30 days after the service of process on Prospect on December 7, 2020. *See* 28 U.S.C. § 1446(b).

11. This action is removable to the Western District of Texas, Austin Division because it is the district in which the state action in Travis County, Texas was pending. *See* 28 U.S.C. §§ 1441(a), 1446(a).

12. A copy of all documents filed in the state court action are attached as Exhibits 1-6. 28 U.S.C. § 1446(a).

13. Contemporaneous with the filing of this Notice of Removal, Prospect is filing a notice with the Travis County District Clerk to provide notice that the case has been removed to this Court, with a copy of this Notice of Removal attached thereto. 28 U.S.C. § 1446(d).

14. With this Notice of Removal, Prospect concurrently files a civil cover sheet (Form JS-44) (Exhibit 7) and Supplement to JS 44 Civil Cover Sheet (Exhibit 8). *See* L.R. Civ. 3.a.

CONCLUSION

WHEREFORE, the above-captioned case pending before the 261st Judicial District Court of Travis County, Texas, Cause No. D-1-GN-20-007291, is now removed to the United States District Court for the Western District of Texas pursuant to 28 U.S.C. sections 1332, 1441, and 1446.

Dated: January 5, 2021.

Respectfully submitted,

/s/ Elliot Strader

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following counsel of record:

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this 5th day of January, 2021.

/s/ Elliot Strader

Elliot Strader